

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIAKEN COOPER,  
Plaintiff,

v.

KATHLEEN ALLISON, et al.,  
Defendants.

Case No. 20-09415 BLF (PR)

**ORDER STRIKING NON-  
COGNIZABLE CLAIMS; OF  
SERVICE; DIRECTING  
DEFENDANTS TO FILE  
DISPOSITIVE MOTION OR NOTICE  
REGARDING SUCH MOTION;  
INSTRUCTIONS TO CLERK**

Plaintiff filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against the officials and employees at San Quentin State Prison (“SQSP”) where he is currently incarcerated, officials of the California Department of Corrections and Rehabilitation (“CDCR”), and officials at another prison. Dkt. No. 4. The Court screened the amended complaint and granted leave to amend to correct various deficiencies. Dkt. No. 14. Plaintiff was also advised that in the alternative, he may file notice that he wishes to proceed solely on the Eighth Amendment claim, and strike all other claims from the action. *Id.* at 9. Plaintiff has filed notice that he wishes to pursue this latter course of action. Dkt. No. 15. Accordingly, the Court will order service on Defendants on the cognizable claim and strike all other claims from the amended complaint.

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## DISCUSSION

### A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

### B. Plaintiff's Claims

In an initial screening order, the Court found the amended complaint set forth the following cognizable claim:

Based on the remaining allegations, the amended complaint states an Eighth Amendment deliberate indifference claim against unsafe conditions at SQSP. *See Farmer v. Brennan*, 511 U.S. 825, 832, 834 (1994). This claim shall proceed against the named individuals who were involved in the decision to transfer CIM based on the following allegations: (1) inmates who were already exposed to COVID-19 were not tested prior to their transfer out of CIM; (2) these potentially infected inmates were transported to SQSP in conditions that did not comply with recommended social distancing protocols, increasing the likelihood of further spread; (3) CIM inmates were exposed to the SQSP population without additional safety protocols in place; and (4) the failure by SQSP to properly quarantine infected inmates during the outbreak resulted in Plaintiff contracting COVID-19 and suffering its ill effects within one month after the transfer.

Dkt. No. 14 at 8.

Based on Plaintiff's election, this action will proceed on the Eighth Amendment

claim. All other claims shall be stricken from the complaint.

### CONCLUSION

For the reasons state above, the Court orders as follows:

1. This action shall proceed on the Eighth Amendment claim for deliberate indifference against unsafe conditions at SQSP due to COVID-19. All other claims are stricken from the complaint.

2. The following defendants at the CDCR, SQSP, and CIM shall be served:

- a. **Kathleen Allison, Director of the CDCR**
- b. **Ralph Diaz, Secretary of the CDCR**
- c. **Ron Davis, Associate Director of Reception Centers for the CDCR**
- d. **R. Steven Tharratt, Director of Medical Services for the CDCR**
- e. **Dr. Joseph Bick, Director of CCHCS for the CDCR**
- f. **Clark Kelso, Federal Receiver**
- g. **Ron Broomfield, Acting Warden of SQSP**
- h. **Dr. A. Pachynski, Chief Medical Officer at SQSP**
- i. **Clarence Cryer, Healthcare Chief Executive Director at SQSP**
- j. **Dr. L. Escobell, Chief Medical Officer at CIM**
- k. **Dean Borders, Warden of CIM**

Service on the listed defendant(s) shall proceed under the California Department of Corrections and Rehabilitation's (CDCR) e-service program for civil rights cases from prisoners in CDCR custody. In accordance with the program, the clerk is directed to serve on CDCR via email the following documents: the operative complaint, and any attachments thereto, Dkt. No. 9, a copy of the court's "Order of Partial Dismissal and Dismissal with Leave to Amend, Dkt. No. 14, this order of service, a CDCR Report of E-Service Waiver form and a summons. The clerk also shall serve a copy of this order on the plaintiff.

1 No later than 40 days after service of this order via email on CDCR, CDCR shall  
2 provide the court a completed CDCR Report of E-Service Waiver advising the court  
3 which defendant(s) listed in this order will be waiving service of process without the need  
4 for service by the United States Marshal Service (USMS) and which defendant(s) decline  
5 to waive service or could not be reached. CDCR also shall provide a copy of the CDCR  
6 Report of E-Service Waiver to the California Attorney General's Office which, within 21  
7 days, shall file with the court a waiver of service of process for the defendant(s) who are  
8 waiving service.

9 Upon receipt of the CDCR Report of E-Service Waiver, the clerk shall prepare for  
10 each defendant who has not waived service according to the CDCR Report of E-Service  
11 Waiver a USM-205 Form. The clerk shall provide to the USMS the completed USM-205  
12 forms and copies of this order, the summons and the operative complaint for service upon  
13 each defendant who has not waived service. The clerk also shall provide to the USMS a  
14 copy of the CDCR Report of E-Service Waiver.

15 3. No later than **ninety-one (91) days** from the date this order is filed,  
16 Defendants shall file a motion for summary judgment or other dispositive motion with  
17 respect to the claims in the complaint found to be cognizable above.

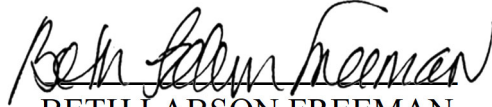
18 a. Any motion for summary judgment shall be supported by adequate  
19 factual documentation and shall conform in all respects to Rule 56 of the Federal Rules of  
20 Civil Procedure. Defendants are advised that summary judgment cannot be granted, nor  
21 qualified immunity found, if material facts are in dispute. If any Defendant is of the  
22 opinion that this case cannot be resolved by summary judgment, he shall so inform the  
23 Court prior to the date the summary judgment motion is due.

24 b. **In the event Defendants file a motion for summary judgment, the**  
25 **Ninth Circuit has held that Plaintiff must be concurrently provided the appropriate**  
26 **warnings under *Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (en banc). See**  
27 ***Woods v. Carey*, 684 F.3d 934, 940 (9th Cir. 2012).**

10. Extensions of time must be filed no later than the deadline sought to be extended and must be accompanied by a showing of good cause.

**IT IS SO ORDERED.**

**Dated: \_\_June 14, 2021\_\_**

  
BETH LABSON FREEMAN  
United States District Judge

United States District Court  
Northern District of California

Order of Service  
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